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MISSOULA, MT

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PATRICK E. DUFFY

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

JIM YOUNKIN,)	CV 05-48-M-DWM-JCL
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
THE PRUDENTIAL INSURANCE)	
COMPANY OF AMERICA, a New)	
Jersey Company; WASHINGTON)	
CORPORATIONS, a Montana)	
Company, LONG TERM DISABILITY)	
COVERAGE FOR ALL EMPLOYEES OF)	
MONTANA RAIL LINK, INC. and I&M)	
RAIL LINK , LLC OF WASHINGTON, and)	
DOE DEFENDANTS 1 THROUGH V,)	
)	
Defendants.)	
)	

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendations in this matter on April 16, 2007, the sole purpose of which is to determine the proper amount of attorney's fees to be awarded to the Plaintiff. Applying the

"hybrid lodestar/multiplier" method of calculation adopted by the Ninth Circuit in Van Gerwen v. Guarantee Mut. Life Co., 214 F.3d 1041, 1045 n.2 (9th Cir. 2000), Judge Lynch recommended that Plaintiff Younkin be awarded \$46,140.00 in attorney's fees.


Defendant Prudential Insurance Company of America filed what it calls a "limited objection" to the recommendation, in which Prudential expresses its intent to seek recalculation of the fee award should it prevail on appeal in a manner that would alter the scope of claims for which Plaintiff Younkin is entitled to compensation. The document does not state a legal objection to Judge Lynch's recommendation.

Because they did not timely object the parties have waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000). I can find no clear error with Judge Lynch's recommendation and therefore adopt it in full.

Accordingly, IT IS HEREBY ORDERED that Plaintiff Younkin's motion for attorney's fees is granted, and Younkin is entitled to \$46,140.00 in attorney's fees.

The Clerk of Court is directed to enter final judgment and to close the case.

Dated this 3rd day of May, 2007.



Donald W. Molloy, Chief Judge
United States District Court

